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No. 07-401

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAREN and MICHAEL GRAVELLE,

Petitioners,

v.

HURON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES and THE CRADLE SOCIETY,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Ohio, Sixth Appellate District, Huron County, Ohio

BRIEF FOR RESPONDENT HURON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners have presented compelling reasons to grant the Writ for Certiorari on the issues of the abuse of the Gravelle children and the termination of the Petitioners' parental rights where the Petition fails to establish any of the threshold jurisdictional elements under Rule 10 of the United States Supreme Court Rules in that there have been no decisions issued in this matter by a United States court of appeals or the Ohio Supreme Court, nor has a state court issued a decision on an important question of federal law in the proceedings below.

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BRIEF OF RESPONDENT IN OPPOSITION

INTRODUCTION

Petitioners had eleven children in their home. Based on the Petitioners' treatment of these eleven children all were adjudicated to be dependent and eight were adjudicated to be abused. Subsequently the Petitioners had their parental rights terminated when the Huron County Juvenile Court granted permanent custody of ten of the children and temporary custody of the eleventh to the Huron County Department of Job and Family Services.

Petitioners fail to present compelling reasons to grant the Writ for Certiorari on the issues of the abuse of the Gravelle children and the termination of the Petitioners' parental rights since the Petition fails to establish any of the threshold jurisdictional elements under Rule 10 of the United States Supreme Court Rules. Specifically, there have been no decisions issued in this matter by a United States court of appeals or the Ohio Supreme Court, nor has a state court issued a decision on an important question of federal law in the proceedings below.

This case does not merit review by this Court. This case was a case of factual determination. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law". Sup. Ct. R. 10. The issues Petitioners present to this Court are the same issues presented to the Ohio Supreme Court. The Ohio Supreme Court denied

review and this Court should deny the Petition for a Writ of Certiorari.

STATEMENT OF THE CASE AND FACTS

The situation that gives rise to this appeal is the treatment of eleven children that were adopted or in the pre-adoptive state by the Petitioners. The Petitioners were the adoptive parents of ten children and were in the adoption process for the eleventh child. An investigator with the Huron County Department of Job and Family Services (hereinafter the Department), received information regarding the Petitioners' children being kept in cages. The investigator began an investigation that led to a visit to the Petitioners' house on September 9, 2005. In the upstairs of the home, the investigator observed two bedrooms that contained multiple wood and wire caged structures with doors. Each cage door was equipped with an alarm. The structures were very dark inside and, in the first room, none had any mat, mattress, or pillows. Only one cage had a mattress – that of the child with Down's syndrome. The structures had plywood nailed to the outside areas where the child inside had pulled at the wire in an effort to get out. While at the home, the investigator saw the Down's syndrome child, peering out at the investigator from within her cage.

A third room shared by two toddlers was barricaded with a wooden slat door topped by a standard

baby gate. This room had a dresser outside in the hall area that was pulled in front of the slat door to prevent the occupants of the room from getting out. The entire second floor of the house had the overwhelming stench of urine.

Based on the investigator's observations a search warrant was approved by the local judge and executed the same day by the Huron County Sheriff and deputies. Based on the conditions the Sheriff found, the Sheriff removed all eleven children and placed them in foster care after medical clearance from the local hospital.

On September 12, 2005 the Department filed complaints alleging all eleven children were dependent and neglected, as well as complaints eight of the children were abused. On this same day the Huron County Juvenile Court held a Shelter Care Hearing and placed the eleven children in the temporary custody of the Department.

The children were interviewed by the Sheriff's Office and the Department. The Petitioners had alleged the children had a wide variety of special needs. These alleged special needs were based on information provided by the Petitioners. Therefore, the Department promptly retained experts in child psychology to conduct assessments on the children's psychological and overall mental states. These evaluations of the children indicated the children did not have the extensive needs claimed by Petitioners.

The results of the interviews and assessments were presented to the Juvenile Court.

An adjudicatory hearing was held from December 6, 2005 to December 10, 2005. Respondents and the Petitioners presented evidence and testimony. The testimony encompassed not only the cages and the physical hazards of the home, but also the harsh and unwarranted disciplinary measures used by the Petitioners. The Petitioners used extreme and harsh punishments to deal with normal childhood behavior. These punishments included forcing a child to live in the bathroom for approximately three months, locking a child outside wearing only wet pajamas or using a hose to spray a child down in the yard, both in very cold weather, all for wetting the bed. Also, Petitioners would shove some of the children's heads into the toilet for misbehavior, including that of a child with Down's syndrome. Based on the evidence presented, the Huron County Juvenile Court issued a judgment on December 22, 2005 finding three of the children dependent under R.C. 2151.04(D), all eleven children were dependent, under R.C. 2151.04(C), and eight of the children were abused under R.C. 2151.031(B) "because they were endangered as defined in R.C. 2919.22(A) and R.C. 2919.22(B)(4), and that [one child] is also an abused child as defined by R.C. 2151.031(D)." *In re Mercy Anne Gravelle et al.*, Huron County Common Pleas Court Juvenile Division, DNA 2005 00056-00066 p. 4, 6.

On January 18, 2006 parties were present at the juvenile court for a dispositional hearing. Respondent

moved for permanent custody of the eleven children. Based on this request, the Respondent also requested a continuance of the hearing. The dispositional hearing was conducted starting on February 22, 2006. The Juvenile Court heard over twelve witnesses' testimony over a six day time period. Evidence and testimony was presented, including the testimony of two of Mr. Gravelle's biological adult children. The two biological children testified about the Petitioners' pattern of extreme punishment and abusive treatment of their biological children. The biological children testified that the parents met at a sex offender group in which Mr. Gravelle was there because he had admitted to sexual abuse of his daughter and Mrs. Gravelle was in attendance because her ex-husband had sexually abused her daughter. The Huron County Juvenile Court issued a judgment entry on March 20, 2006 granting permanent custody of the ten children and temporary custody of Mercy Anne to the Department.[1]

Petitioners appealed to the Sixth District Court of Appeals and the Appellate Court affirmed the decisions of the Huron County Juvenile Court, March 14, 2007. The Ohio Supreme Court denied review of the case, June 20, 2007. Appeal to this Court followed.

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[1] Petitioners were subsequently indicted and convicted by a jury on multiple counts of felony child endangering and misdemeanor child abuse. *State of Ohio v. Gravelle*, Huron County Common Pleas Court Case Nos. CRI 2006-0152 and 2006-0153. Appeals pending before the Sixth District Court of Appeals, Case No. H-2007-0010.

All of the children have a possibility of being adopted to a permanent home and some are in the pre-adoptive process. However, after over two years since the children's removal from the Petitioners, progress towards adoption and permanent placement for these children is halted with each appeal filed.

REASONS FOR DENYING THE PETITION

The petition should be denied because Petitioners do not present compelling reasons to grant the Writ for Certiorari on the issues of the abuse of the Gravelle children and the termination of the Petitioners parental rights since the Petition fails to establish any of the threshold jurisdictional elements under Rule 10 of the United States Supreme Court Rules. Specifically, there have been no decisions issued in this matter by a United States court of appeals or the Ohio Supreme Court, nor has a state court issued a decision on an important question of federal law in the proceedings below. The issues Petitioners present to this Court are the same issues presented to the Ohio Supreme Court which denied review.

I. REVIEW IS NOT WARRANTED BECAUSE THE DEFINITION OF CHILD ABUSE IN OHIO IS CLEARLY DEFINED.

Petitioners' first argument does not claim that this matter arises under the constitution or federal law. The state legislature's definition of child abuse is

not a federal question. The definition is not a sufficiently important question because the Ohio Supreme Court failed to take it in for review. Even if appropriate for this Court to review the definition of child abuse, the state's definition of child abuse is not unconstitutional.

In order to adjudicate a child to be an abused child, a juvenile court must find clear and convincing evidence to support at least one of five definitions of child abuse according to R.C. 2151.031. In the case at hand, the Juvenile Court found eight of the eleven children in the home to be abused. The three children in the home that were not caged were found to be dependent.

The eight abused children were adjudicated to be such under R.C. 2151.031(B) because the children were found to be endangered according to R.C. 2919.22(A) and (B)(4). An abused child includes one who "is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child". R.C. 2151.031(B).

Petitioners argue this Court should grant review because the definition of child abuse in Ohio is unconstitutionally vague. However, Petitioners did not raise this argument to the Huron County Juvenile Court nor the Sixth District Court of Appeals. Additionally, as in their request for review to the Ohio

Supreme Court, Petitioners base their entire vagueness argument on the definition of abuse under R.C. 2919.22(B)(1) which addresses serious physical harm. Petitioners claim to question the definition of abuse according to R.C. 2919.22(A) and B(4). However, the argument actually made and case law cited by Petitioners address the definition of abuse only according to R.C. 2919.22(B)(1). Petitioners quote extensively from *In the Matter of Noftz* (1986), 1986 WL 9098, however, the *Noftz* Court analysis was focused on child abuse arising from serious physical harm under 2919.22(B)(1).

It is important to note the Huron County Juvenile Court did not adjudicate any of the children under R.C. 2919.22(B)(1), nor did the Juvenile Court even address the definition of child endangering or child abuse under R.C. 2919.22(B)(1). Therefore the definition of child abuse under R.C. 2919.22(B)(1) is not applicable to this particular case. Since R.C. 2919.22(B)(1) was not the cited authority to determine these children were abused, this would not be an appropriate case to scrutinize the definition of abuse according to R.C. 2919.22(B)(1).

Petitioners argue serious physical harm or a substantial risk of serious harm to the physical health or safety of the child must be demonstrated prior to a finding of abuse. Abuse is not exclusively physical, but can also be mental. Petitioners neglect to address Petitioners' abuse to the mental health and development of the children. Instead, Petitioners cite various cases defining abuse under R.C. 2919.22(B)(1).

Once again, that subsection was not used in this case and therefore not relevant to this matter.

Specifically, R.C. 2919.22(B)(4) states child endangering includes when a person "repeatedly administer(s) unwarranted disciplinary measures to the child, when there is substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development". Dr. Keith Hughes and Dr. William Benninger conducted psychological assessments of the children. Both doctors along with Dr. Ronald Hughes testified as to the unwarranted and excessive disciplinary measures the children suffered at the hands of Petitioners. The three doctors testified some of the children's mental health or development was impaired already and all of the children were at substantial risk for their mental health or development to be seriously impaired or retarded. The children's mental health or development was at substantial risk to be impaired or retarded either because they were caged and excessively disciplined by Petitioners or they were subjected to witnessing Petitioners caging and excessive discipline of their siblings.

Therefore, Petitioners' first argument fails to claim a matter that arises under the constitution or federal law or proposes an important federal question to warrant review by this Court.

II. REVIEW IS NOT WARRANTED BECAUSE THERE WAS NOT A VIOLATION OF THE PETITIONERS' CONSTITUTIONAL OR STATE RIGHTS

Petitioners' final argument posits to arise under the Fourteenth Amendment, however, they fail to make any claims under the Fourteenth Amendment and further, Petitioners were afforded all due process as individuals and parents. This matter does not present a sufficiently important question because the Ohio Supreme Court failed to take it in for review.

Petitioners have not argued a constitutional question. A substantial constitutional question is not per se formed solely because the case resulted in the termination of parental rights. Simply because the Petitioners had their parental rights terminated is not in and of itself a compelling reason for this Court to review this case. Therefore, the Petition should be denied.

However, responding to Petitioners' argument, reasonable efforts, or a reunification plan are not required when a juvenile court makes a disposition order pursuant to R.C. 2151.353(A)(4). *In re Baby Girl Baxter* (1985) 17 Ohio St. 3d 229, Syl.2. "It is well-established that where a children services agency seeks original permanent custody of a child pursuant to R.C. 2151.353(A)(4), the agency is not required to establish a case plan." *In re Baby Girl Doe* (2002) 149 Ohio App. 3d 717, 736, citing *In the Matter of Demetrius H.* (9 March 2001) 2001 App. LEXIS

1012, Lucas App. No. L-00-1300, unreported; *In the Matter of Misty B* (17 September 1999) 1999 Ohio App. LEXIS 4314, Lucas App. No. L-98-1431, unreported (further citations omitted).

Even though not required, the Respondent did demonstrate it made reasonable efforts to reunify the family. Petitioners inaccurately state "even prior to the adjudicatory hearing, the County had decided to move for permanent custody. So no matter what the Gravelles did to cooperate after the adjudicatory hearing decision, it would not have mattered." (Pet. at 18). The Respondent demonstrated reasonable efforts to reunify the children with Petitioners as testified to by employees of the Department and the Guardian ad Litem. These efforts commenced shortly after removal of the children and continued through the dispositional hearing, until the Juvenile Court terminated Petitioners' parental rights. The Respondent sought out relative placements, and attempted to provide services to Petitioners to correct what led to the removal of the children in the first place. Both the trial court and appellate court made findings of fact accordingly. *In the Matter of Mercy Anne G.*, Sixth District Court of Appeals, Nos. H-06-007-017, p. 33; *In re Mercy Anne Gravelle et al.*, Huron County Common Pleas Court Juvenile Division, DNA 2005 00056-00066, March 20, 2006, p. 8.

Overall the testimony was that neither of the Petitioners was willing to work with the Department or utilize any of the offered services in an attempt to reunify with the children. In particular, the testimony

of the investigator, Ms. Johnson and the Guardian ad Litem was that the Ms. Johnson had tried to prepare the case plan with Petitioners to get their input, make recommendations and give referrals for services. Petitioners were not cooperative in this process and refused to sign the proposed case plan, which stated a goal of reunification.

Additionally, Department caseworkers, Ms. Ringlein, Ms. Hess, and Ms. Keller all testified they went to the Petitioners' home to discuss a proposed updated case plan. At this meeting, Petitioners were unwilling to go over the proposed case plan, and would not sign the case plan. At this same meeting the caseworkers had requested permission to view the upstairs bedroom area of the home. The upstairs of the home was a major concern for the Department in that this is where the cages were located, as well as exposed wiring and smoke alarms without batteries. Mrs. Gravelle explicitly denied the caseworkers access to the upstairs, therefore the Department's efforts were denied.

The Petitioners denied many other attempts the Department made to attempt reunification. The Department offered services to the Petitioners to assist them to remedy the issues that caused the removal, to remedy the concerns that continued the children's temporary custody with the Department, and to assist Petitioners in compliance with the trial court orders. Ms. Johnson testified she tried to arrange visitation for Petitioners with Mercy Anne, the pre-adoptive child, but Mrs. Gravelle was unwilling

to schedule anything at the time. Ms. Johnson testified she left her contact information along with the Department's toll free number for Mrs. Gravelle to call and schedule at a later date. Mrs. Gravelle never contacted the Department to arrange the visitation. Instead a caseworker, after many left messages, was able to make contact with Petitioners and give them available dates for visitation. Ms. Hess, the caseworker specific to Mercy Anne, testified Petitioners never contacted her to arrange visitation. All of the visitations with Mercy Anne were a result of Ms. Hess initiating contact with Petitioners and extending an invitation to have a visit.

The Juvenile Court ordered visitation to be through the Middleground program (a court ordered visitation setting in a neutral location). Regarding Middleground visitation, the Department's testimony was the standard policy and procedure of the Department in scheduling Middleground visitation is the party requesting the visitation needs to initiate contact with the Department, be placed on the waiting list, if there is one, and check on the availability weekly to maintain placement on the waiting list. Even though Petitioners were granted Middleground visitation, they did not contact the Department to initiate such. However, the Department, making efforts to reunify the family, prioritized the case and contacted Petitioners to offer Middleground visitation at the next offered Middleground session. This offer was made to Petitioners even though there were families that had followed the proper procedures to be

placed on the waiting list for Middleground that had not yet had an opportunity to participate in the Middleground program.

Also, the Department made numerous attempts to gather some items from Petitioners the Court had ordered be turned over to the Department. The caseworkers testified their calls and letters to Petitioners went unanswered and unreturned. The appellants did not bring the items such as vaccination records, coats and other personal items for the children, and some items used in therapy for Mercy Anne to the Department. Instead, the Guardian ad Litem testified she made contact with maternal grandmother to arrange for some of the items to be turned over. Other items were left on the porch for the Guardian to retrieve, but Petitioners refused to bring any of the items to the Department, despite a court order.

The caseworkers testified up until and including the date of the dispositional hearing they still did not have all the items requested by the Department and ordered by the Court to be provided by Petitioners. These were items that were of no use to Petitioners and would have benefited the children in their health, education, and therapy. This was considered by the court in accordance with R.C. 2151.419(A)(1) which states in part, "In determining whether reasonable efforts were made, the child's health and safety shall be paramount."

Further, in an effort to assist Petitioners, the Department volunteered to cover the cost of the court ordered psychological evaluation and sex offender risk assessment for both Mr. and Mrs. Gravelle. Upon agreement by all parties, the Court ordered the Department to provide Petitioners a list of three to five possible psychologists to perform the assessments. Petitioners were court ordered to choose one psychologist from the list and obtain the evaluation. Even though Petitioners submitted notice of their choice in psychologists to the court and counsel, they did not schedule an evaluation.

All of the caseworkers testified they had not received a psychological evaluation or a sex offender risk assessment for either Mr. or Mrs. Gravelle. Ms. Ringlein testified that she went over this specific court order with Petitioners at their house during a visit in late January, 2006 to ensure Petitioners understood what was expected of them. Ms. Ringlein testified she provided Mrs. Gravelle with a copy of the judgment entry from the trial court to verify the Department would be responsible for the cost of the evaluation. Moreover, Ms. Johnson testified she contacted the psychologist selected by Petitioners prior to the hearing beginning on February 22, 2006 and again on the day she testified and determined neither Mr. nor Mrs. Gravelle had been to the psychologist to have the evaluation or even contacted the psychologist to schedule the evaluation. All of the Department workers testified they had not received a

psychological evaluation or sex offender risk assessment for either Mr. or Mrs. Gravelle from the psychologist chosen by Petitioners, or any other psychologist for that matter.

Additionally, Petitioners refused to sign releases of information provided to them by the Department in an effort to help the Department work towards reunification. Ms. Ringlein, Ms. Hess, and Ms. Keller testified they provided the releases to Petitioners and they refused to sign them. Petitioners were required by court order to sign the releases based upon their indication they would do anything to assist in regaining custody of the children. The Department made contact with Petitioners at a later date and once again asked them to sign the releases. On yet a third occasion, while at the Department for visitation, Mr. and Mrs. Gravelle were once again given the opportunity, yet both Petitioners refused the numerous requests made to sign the releases.

There is not a specified period of time reasonable efforts, when required, need to be made prior to permanent custody. In this case, a reunification plan was not required; however, the Department continued to make reasonable efforts, up until the Judgment from the Juvenile Court granting permanent custody to the Department as the disposition on March 20, 2006. The efforts made for over six months were more than sufficient when the court concluded at a dispositional hearing the children could not or should not be returned to Petitioners within a reasonable period of time.

After hearing all the testimony, and considering all the evidence, including testimony from one of the children in question, as well as two adult biological children of Mr. Gravelle, the Juvenile Court concluded it would be in the children's best interest to be placed in the permanent custody of the Department. In accordance with R.C. 2151.414(B), the Juvenile Court ruled the children could not or should not be returned to Petitioners within a reasonable period of time and it was in the children's best interest to be placed in the permanent custody of the Department.

> The Court finds clearly and convincingly, however, that the Department *has* made reasonable efforts to prevent the continued removal of the children. . . . [Petitioners] lack of insight and understanding, as described above, supports the decision that the children cannot and should not be returned to the Gravelle home.

In re Mercy Anne Gravelle et al., Huron County Common Pleas Court Juvenile Division, DNA 2005 00056-00066, March 20, 2006, p. 8 (emphasis in original).

Permanent custody was appropriate based on factors considered from R.C. 2151.414(D). This decision was upheld be the Sixth District Court of Appeals. The Ohio Supreme Court declined to review the case.

Therefore, Petitioners fail to make any claims under the Fourteenth Amendment, under the Constitution or federal law. This matter does not present a sufficiently important federal question. Simply because the Petitioners had their parental rights terminated is not in and of itself a compelling reason for this Court to review this case. Therefore, the Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondent Huron County Department of Job and Family Services respectfully requests the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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